

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARK LINGENFELTER,

Plaintiff,

v.

CAROLYN COLVIN, Acting Commissioner
of Social Security,

Defendant.

Case No. 3:14-cv-00202-MMD-VPC

ORDER ACCEPTING REPORT AND
RECOMMENDATION OF MAGISTRATE
JUDGE VALERIE P. COOKE

Before the Court is Magistrate Judge Valerie P. Cooke's Report and Recommendation ("R&R") (dkt. no. 17), regarding Plaintiff Mark Lingenfelter's motion for reversal or remand (dkt. no. 18) and Defendant Carolyn Colvin's cross-motion to affirm and opposition (dkt. nos. 13, 14), and plaintiff's opposition and reply (dkt. nos. 15, 16). Judge Cooke entered the R&R on February 2, 2015. The parties had until February 19, 2015, to file any objections. No objections were filed.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a


1 magistrate judge's report and recommendation where no objections have been filed. See
2 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
3 of review employed by the district court when reviewing a report and recommendation to
4 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
5 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
6 view that district courts are not required to review "any issue that is not the subject of an
7 objection"). Thus, if there is no objection to a magistrate judge's recommendation, then
8 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
9 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
10 which no objection was filed).

11 Nevertheless, this Court finds it appropriate to engage in a *de novo* review in
12 order to determine whether to adopt the R&R. The R&R finds substantial evidence in the
13 record does not support the ALJ's determination of nondisability. The R&R also finds that
14 the ALJ erred with respect to her evaluation of plaintiff's past relevant work, her
15 conclusion that plaintiff has transferable customer service skills, and her rejection of
16 Cestkowski's postural limitations findings. Because the errors are not harmless, and
17 because further proceedings can rectify these errors, the R&R concludes that remand is
18 appropriate. Upon review of the R&R and the records in this case, the Court finds good
19 cause to adopt the R&R in full.

20 It is hereby ordered that the R&R (dkt. no. 17) is accepted and adopted. Plaintiff's
21 motion to remand (dkt. no. 12) is granted and defendant's cross-motion to affirm (dkt. no.
22 13) is denied.

23 It is further ordered that the case is remanded to the ALJ for further administrative
24 proceedings.

25 DATED THIS 11th day of May 2015.

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27 
28 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE